

# HYDRAULIC FRACTURING A TRIBAL PERSPECTIVE

## NATIONAL TRIBAL OPERATIONS COMMITTEE MEETING

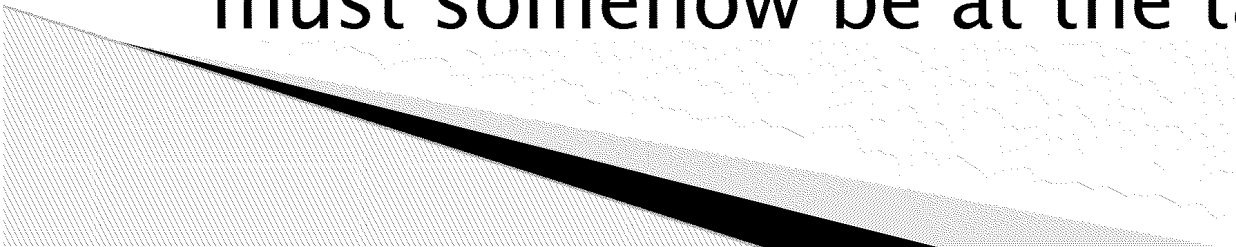
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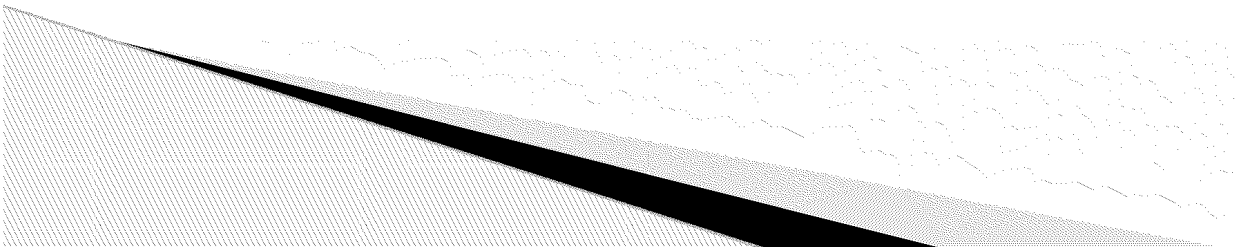
# HYDRAULIC FRACTURING

- \* Varying perspectives in Indian Country regarding “fracking”.
- \* Some Tribes want “fracking” and claim they are ready for it, others don’t want it at all!
- \* Many others fall between these two perspectives.
- \* In addition to Tribes there are Allottees who must somehow be at the table.



# Major Areas of Consideration

- \* Policy-making
- \* Legal
- \* Technical
- \* Administrative



# Major Areas of Consideration

## \* Policy-making

- Major energy development issues.
- Role of water, land & air in larger tribal context.
- Cultural & archaeological concerns.
- Development of energy policy goals.
- Chemical disclosure.
- Political issues affecting energy development.

# Major Areas of Consideration

## \* Legal

- Status of Tribes energy resources.
- Types of Agreements. (IMDA)
- Legal resources available.
- Codes and ordinances (Present & future).
- Tribal govt. structure and court system.
- Tribes collecting or sharing in penalties.
- Barriers and incentives.
- Conservation tax & tax structure.
- Tribal Energy Resource Agreements (TERA's).

# Major Areas of Consideration

## \* Technical

- Understand resource base (quality/quantity).
- Baseline data (air, land & surface/gw).
- Analysis of reserves (principals & locations).
- Research & inventory data.
- Assign research responsibilities.
- Resource monitoring activities.
- Field data collection.
- Protection strategies.

# Major Areas of Consideration

## \* Administrative

- Manpower & qualifications.
- Tribal Energy Departments.
- Infrastructure & development funding.
- Criteria for resource use & management.
- Building environmental quality into agreements & codes.
- Role of Federal Agencies.
- Inter-Governmental Agreements (Tribes,

## Federal Agency Inclusion

- \* EPA – UIC, water & air.
  - Technical assistance.
  - Financial resources.
  - Transfer of databases & records mgmt.
  - Evaluation, assessment & utilization of data.
  - Listening to Tribes (Consultation).
  - Promulgating rules.
  - Sorting through the regulatory framework of Federal agencies.
  - Upgrade the Tribal standing within EPA.



# Federal Agency Inclusion

- \* **BIA** – Surface responsibilities
  - Central Office guidance.
  - Regional Office obligations.
  - Agency responsibilities.
  - 638 contracting.
  - Inter-governmental Personnel Actions- (IPA agreements).
  - Inter-agency collaboration & communication.

## Federal Agency Inclusion

- \* **BLM** – Inspection & Enforcement
  - Federal Oil & Gas Royalty Management Act of 1982.
  - FOGRMA – Section 202, Cooperative Agreements, allows Tribes to assume functions.
  - Sub-surface responsibilities.
  - Permit approval.
  - Monitoring and assessment.
  - Compliance with Federal statutes and regulations.
  - Developing new rules for fracking.

# Federal Agency Inclusion

## \* Unique Legal & Political Relationship

- Educate Congress & other federal agencies.
- MOU 2000.
- Recognize & understand tribal sovereignty!
- States received financial and technical support from the Federal Govt; Tribes did not.
- Enforce Tribal Codes & policies.
- Fully implement EPA Indian Policy.

## Observations from Pavillion

- \* Practice of fracking is largely unregulated at the federal level.
- \* Fracking was exempted from the SDWA through the so-called “Halliburton Amendment”.
- \* The Energy policy Act of 2005 requires regulation of fracking operations under SDWA if diesel fuel is used as a fracking fluid additive.
- \* As of 2011 EPA is studying the implementation of diesel fracking rules

## Observations from Pavillion

- \* There is a lack of research on the risks of fracking fluids contaminating underground drinking water sources.
- \* Claims that the possibility of water contamination through fracturing is extremely low appears to have led to a false sense of security.
- \* Monitoring and research of the toxicity of fracking fluids and fate transport of fracking fluids within the subsurface and groundwater is needed.

## Observations from Pavillion

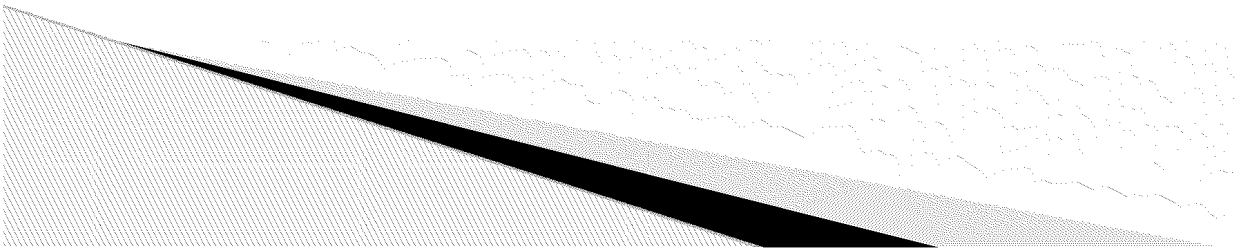
- \* Enormous quantities of chemicals are injected into fracking wells.
- \* Many of the chemicals used in fracking are carcinogenic or have other toxic properties.

Examples:

- Ethylene glycol – affects the central nervous system, heart & kidneys.
- Triethanolamine zirconate – chronically toxic to aquatic species.
- Hydro-treated light petroleum distillate – causes dizziness, headache, drowsiness & nausea.
- Methanol – highly toxic, can be fatal or cause blindness.

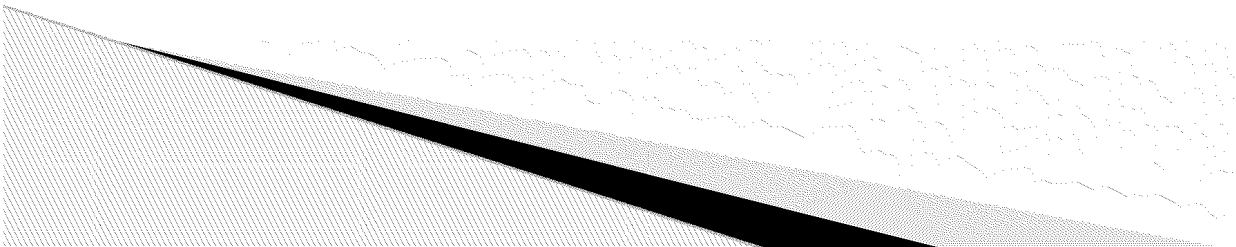
# Observations from Pavillion

- Individually these chemical have known toxic effects, but they are used in various combinations and in large amounts resulting in chemical mixtures with unknown, but likely increased levels of toxicity.
  - Recent disclosure laws require listing of chemicals used in fracking fluids, but many contain chemical components that are listed as ‘proprietary’ or ‘trade secret’.
  - In many instances the oil and gas service companies were unable to identify the proprietary chemicals suggesting that the companies are injecting fluids containing chemicals that they themselves cannot identify.
- (Source – U.S. House of Representatives Energy & Commerce Hydraulic Fracturing Report.).



## Observations from Pavillion

- The companies used 94 million gallons of 279 products that contained at least one chemical or component that the manufacturers deemed proprietary or a trade secret. (Source – U.S. House of Representatives Energy & Commerce Hydraulic Fracturing Report).
- Degree of toxicity and dangers associated with unreported chemicals is unknown.





# CONCLUSION

## \* Tribal Concerns & Issues

- Protection of the water, land & air resources of our permanent homelands!
- Meaningful consultation with Indian country to obtain clear picture of the national implications.
- Transparency & inclusion.
- Focus on toxicity and human health impacts.
- Developing & upgrading tribal technical & administrative capabilities.

## CONCLUSION

- Tribes need revenue & jobs.
- Energy industry shrewd business dealers.
- Tribes & allottees basically left to fend for themselves.
- The true meaning of trust responsibility.
- Some things more important to Indian people than money!

